IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.128 OF 2006

In

WRIT PETITION NO.2159 OF 2004

Insure Policy Plus Services (India) Pvt. Ltd. & Anr. : Petitioners

V/s.

The Life Insurance Corporation of India & Anr. : Respondents

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Mr.N.H.Seervai with Mr.F.Pooniwala, Mr.S.H.Merchant and Mrs.Manek Joshi i/b. M & M Legal Ventures for the petitioners.

Mr.Ravi Kadam, Advocate General, with Ms Snehal Paranjpe and Ms Snehal Chandurkar i/b. Little & Co., for respondent No.1.

Mr.M.G.Barve for respondent No.2.

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CORAM : F.I.REBELLO & ANOOP V. MOHTA,JJ.

DATE : APRIL 10, 2006.

P.C.

1. The petitioners, by this Motion, have prayed that pending the hearing and final disposal of this petition, this Court be pleased to restrain respondent No.1 i.e. the Life Insurance Corporation of India and its servants, agents, officers and subordinates from making payment of maturity claims in respect of life insurance policies assigned in favour of the petitioners to any person other

than the petitioners.

2. Rule has been issued in the petition on September 30, 2004. Interim relief then prayed for was rejected. The interim relief sought was that circular dated 22.10.2003 issued by respondent No.1 giving certain directions in respect of assignment of those policies. Interim relief was refused. The petitioners had also moved the apex Court which dismissed the S.L.P. It is the case of the petitioners that at the time when they moved this Court, no policy had matured. The relief now sought for is consequential to maturing of policies, consideration of which has been paid by petitioner No.1 to the policy holders who had assigned the insurance policy in favour of petitioner No.1 and is a subsequent event. It is, therefore, submitted that rejection of earlier interim relief ought not to stand in the way of the petitioners in applying for the relief as presently prayed for.

3. The learned counsel relied on the provisions of the Insurance Act, 1938. We need not refer to the various provisions, except section 38 of the Act. Section 38 provides for assignment and transfer of insurance policies. The transfer or assignment is complete and effectual upon the execution of such endorsement or instrument duly attested. Information has to be given to the insurer under section 38(4) and on such information,

the insurer shall record the fact of such transfer or assignment together with other things set out therein. Under sub-section (5), from the date of the receipt of the notice referred to in sub-section (2) of section 38, the insurer shall recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings. In other words, on the assignment being complete and in the notice as required being given, it is the assignee who would be entitled to the proceeds of the policy. It is, therefore, submitted that respondent No.1, pending the hearing and final disposal of the petition, ought to be restrained from making payments in the name of the original policy holder if the assignment is registered in favour of the petitioners.

Our attention is invited to various documents on record being communication dated 7.3.2000 by the Addl. Executive Director (Mktg/CS) addressed to all Zonal Offices in the matter of registering assignment of LIC policy; letter dated 6.2.2003 addressed by the Regional Manager again in the matter of assignment; as also letter

dated 31.3.2003 addressed by the Regional Manager (Mktg.) to Sr. Divisional Manager, Nasik Divisional Office, in the matter of complaints made by the petitioners about refusing to register their policies. We are really not concerned with that aspect as of today.

4. There is one more Act, viz., the Insurance Regulatory and Development Authority Act, 1999 under which an Insurance Regulatory and Development Authority has been constituted. By communication dated March 3, 2004 addressed to the Director of petitioner No.1, it was intimated that the insurer should register the assignment of policies. Respondent No.1 addressed a letter to the Chairman, Insurance Regulatory and Development Authority on March 29, 2004 pointing out the need to amend section 38 of the Insurance Act.

5. On the other hand, on behalf of respondent No.1, the learned counsel submits that a contract of assignment between the petitioners and the policy holder is void being unconscionable and against public policy and, in these circumstances, the respondents, even though had given assignment in favour of the petitioners, are within their right to make payment in favour of the policy holder and not to petitioner No.1. Reliance is sought to be placed on the judgement of the apex Court in L.I.C of India v. Consumer Education & Research Centre [(1995) 5

SCC 482] to contend that there is a statutory social obligation cast on respondent No.1 to provide for insurance. It is also pointed out that under the provisions of the Insurance Regulatory and Development Authority Act, 1999, the petitioners can move the authority under section 14(2) of the Act. It is submitted that there are instances where a policy holder has disputed the assignment of policy and, in these circumstances, it would be appropriate that respondent No.2 decides the controversy.

6. We have heard the learned counsel for the parties. In our opinion, considering the contention urged, rejection of interim relief in the matter of registration of assignment will not stand in the way of the petitioners maintaining the present Motion based on subsequent events which are maturity of the policy and/or the policy becoming payable and non-payment of the proceeds to petitioner No.1, but in favour of the policy holder who had assigned it in favour of petitioner No.1. The petition has been admitted. Considering section 38(5) of the Insurance Act, the petitioners have made a strong prima facie case that it is they who are entitled to the proceeds of the policy, pursuant to the assignment. The respondents cannot deny the petitioners their right to property without following due procedure, considering Article 300A of the Constitution of India. Whether the

assignment is null and void will be an issue to be considered at the hearing of this petition. Prima facie, section 38 permits assignment of policies. In our opinion, therefore, the relief as prayed for by the petitioners will have to be granted in the matter of policies which are registered by respondent No.1.

7. Considering the above, the Notice of Motion is made absolute in terms of prayer clause (a) only in respect of the policies in which there is an assignment in favour of petitioner No.1 and which assignment has been registered by respondent No.1 in favour of the petitioners.

8. Petitioner No.1 to furnish a list of all policies which have been assigned to them and which have been registered within one week from today to the Advocates for respondent No.1.

9. Considering the controversy, in our opinion, the ends of justice would be met if the petition itself is kept for final hearing in the second week of June, 2006. Place the petition for final hearing accordingly.

10. The Notice of Motion stands disposed of.

F.I. REBELLO, J.

ANOOP V. MOHTA, J.